

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

February 14, 2025

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: KLW
DEPUTY

**LEO RIOT, AS TRUSTEE AND TRUST
ADMINISTRATOR, ON BEHALF OF QUASAR
SPENDTHRIFT TRUST,**

Plaintiff, Counterclaim Defendant

v.

APEX TRADER FUNDING INC., ET AL.,

Defendants, Counterclaim Plaintiff.

v.

DAY TRADERS LLC AND MKNET, LLC

Third-Party Defendants.

Civil Action No. 1:24-CV-01557-ADA

JURY TRIAL DEMANDED

AGREED PROTECTIVE ORDER

Before the Court is the parties' joint motion to enter an agreed protective order ("Protective Order"). Based on the parties' submissions and the record in this matter, the Court finds that disclosure and discovery activity in this action are likely to involve production of confidential, sensitive, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, a protective order for such information is justified in this matter:

- to expedite the flow of information;
- to facilitate the prompt resolution of disputes over confidentiality of discovery materials;
- to adequately protect information the parties are entitled to keep confidential;
- to ensure that the parties are permitted reasonably necessary uses of such material in preparation for and in the conduct of trial;
- to address the handling of confidential materials at the end of the litigation; and
- to serve the ends of justice.

This Protective Order does not confer blanket protections on all disclosures of responses to discovery, and the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to be treated as confidential.

After careful consideration, it is ORDERED that the motion is granted, and the Court ORDERS the following:

1. Classified Information

“Classified Information” means any information of any type, kind, or character that is designated as “Confidential,” “Attorneys’ Eyes Only,” or “Source Code,” by any of the supplying or receiving persons, whether it be a document, information contained in a document, information revealed during discovery, or otherwise.

2. Qualified Persons

“Qualified Persons” means:

- a. For Source Code Material:
 - i. the persons identified in Section 3(c)(v)
- b. For Attorneys’ Eyes Only information:
 - i. retained counsel for the parties in this litigation and their respective staff;
 - ii. actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, prior to any disclosure of Classified Information to such person, have signed a document in the form of Appendix A to this Protective Order agreeing to be bound by the terms of this Protective Order and have been designated in writing by notice to all counsel;¹
 - iii. this Court and its staff and any other tribunal, special master, or dispute resolution officer duly appointed or assigned in connection with this litigation; and
 - iv. litigation vendors, court reporters, video camera operators, translators, and other litigation support personnel.
- c. For Confidential information:
 - i. the persons identified in subsection 2(b);
 - ii. the party, if a natural person;

¹ Designation of an expert or consultant under this provision is not a waiver of such person’s status as a consulting-only expert or of any otherwise-existing protection against discovery of such person’s work or opinions.

- iii. if the party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case who, prior to any disclosure of Confidential information to such person, have signed a document agreeing to be bound by the terms of this Protective Order;
 - iv. jury and trial consultants and their staff and mock jurors who have signed a document in the form of Appendix A to this Protective Order agreeing to be bound by the terms of this Protective Order;
 - v. any person who was an author, addressee, or intended or authorized recipient of the Confidential information or a draft of the Confidential information and who agrees to keep the information confidential, provided that such persons may see and use the Confidential information but not retain a copy.
- d. Such other person as this Court may designate after each party has had notice and an opportunity to be heard.

For purposes of subsection 2(b)(ii) and 2(c)(iv), the attorney who retains or designates such persons shall maintain the signed certifications of those persons.

e. **Designation Criteria**

f. *Classified.* A party shall designate as Classified Information only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Classified Information.

Information and documents that may be designated as Classified Information include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, and competitive analyses, personnel files, personal information that is protected by law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to third parties.

Correspondence and other communications between the parties or with nonparties may be designated as Classified Information if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public.

g. *Attorneys' Eyes Only.* A party shall designate as Attorneys' Eyes Only only such information that the party in good faith believes in fact qualifies as "Attorneys' Eyes Only." The designation "Attorneys' Eyes Only" shall be reserved for information that is believed to be unknown to the opposing party or parties, or any of the employees of a corporate party. For purposes of this order, so-designated information includes, but is not limited to, product formula information, design information, non-public financial information, pricing information, customer identification or other customer data.

h. *Source Code.* A party shall designate as Source Code Material only such information that the party in good faith believes in fact is or contains computer source code. For Source Code Material, the following restrictions apply:

- i. Access to a Party's Source Code Material shall be provided only on "stand-alone" computer(s) (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet). The stand-alone computer(s) may be connected to (i) a printer, or (ii) a device capable of temporarily storing electronic copies solely for the limited purposes permitted pursuant to subsection 3(c)(viii and xi) below. Additionally, except as provided in subsection 3(c)(xi) below, the stand-alone computer(s) may only be located at the offices of the producing Party's outside counsel or its vendors.
- ii. The receiving Party shall make reasonable efforts to restrict its requests for such access to the stand-alone computer(s) to normal business hours, which for purposes of this subsection shall be 8:00 a.m. through 6:00 p.m. However, upon reasonable notice from the receiving Party, the producing Party shall make reasonable efforts to accommodate the receiving Party's request for access to the stand-alone computer(s) outside of normal business hours. The Parties agree to cooperate in good faith such that maintaining the producing Party's Source Code Material at the offices of its outside counsel or its vendors shall not unreasonably hinder the receiving Party's ability to efficiently and effectively conduct the prosecution or defense of this Action.
- iii. The producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer(s) in order to access the produced Source Code Material on the stand-alone computer(s). The producing Party shall install software that the reviewing experts may from time to time request to conduct effective source code review. If the requested software requires a commercial license, the receiving Party shall provide such license. Reviewing experts may take notes during review on their own electronic devices, and such notes shall not be subject to review by the producing Party. The reviewing experts agree to abide by such other reasonable security procedures as the parties may agree, including observation of reviewing experts (but not their notes or screens) by the producing Party.
- iv. The producing Party will produce Source Code Material in computer-searchable format on the stand-alone computer(s) as described above.
- v. Access to Source Code Material shall be limited to outside counsel and up to five (5) outside consultants or experts² (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party or competitor identified by the Producing Party with reasonable specificity) retained for the purpose of this litigation and approved to access such Protected Materials pursuant to subsection 2(b)(ii) above. A receiving Party may include excerpts of Source Code Material in an exhibit to a pleading, expert report, or deposition transcript (collectively, "Source Code Exhibits"), provided that the Source Code Exhibits are appropriately marked under this Order, restricted to those who are

² For the purposes of this subsection, an outside consultant or expert is defined to include the outside consultant's or expert's direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall count as a disclosure to a single consultant or expert, provided that such personnel helping in the analysis of Source Code Material shall be disclosed pursuant to subsection 2(b)(ii).

entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court's rules, procedures, and orders.

- vi. To the extent portions of Source Code Material are quoted in a Source Code Exhibit, either (1) the entire Source Code Exhibit will be stamped and treated as "Source Code" or (2) those pages containing quoted Source Code Material will be separately stamped and treated as "Source Code."
 - vii. Except as set forth in subsection 3(c)(xi) below, no electronic copies of Source Code Material shall be made without prior written consent of the producing Party, except as necessary to create documents that, pursuant to the Court's rules, procedures, and order, must be filed or served electronically.
 - viii. The receiving Party shall be permitted to make a reasonable number of printouts and photocopies of Source Code Material, which shall presumptively be a total of ten (10), all of which shall be designated and clearly labeled "Confidential - Source Code," and the receiving Party shall maintain a log of all such files that are printed or photocopied.
 - ix. Should such printouts or photocopies be permissibly transferred back to electronic media, such media shall be labeled "Confidential - Source Code" and shall continue to be treated as such.
 - x. If the receiving Party's outside counsel, consultants, or experts obtain printouts or photocopies of Source Code Material, the receiving Party shall ensure that such outside counsel, consultants, or experts keep the printouts or photocopies in a secured locked area in the offices of such outside counsel, consultants, or expert. The receiving Party may also temporarily keep the printouts or photocopies at: (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably necessary to transport the printouts or photocopies (*e.g.*, a hotel prior to a Court proceeding or deposition).
 - xi. A producing Party's Source Code Material may only be transported by the receiving Party at the direction of a person authorized under subsection 3(c)(v) above to another person authorized under subsection 3(c)(v) above, on paper or removable electronic media (*e.g.*, a DVD, CD-ROM, or flash memory "stick") via hand carry, Federal Express, or other similarly reliable courier. Source Code Material may not be transported or transmitted electronically over a network of any kind, including a LAN, an intranet, or the Internet.
- i. *Nonclassified Information.* Classified Information shall not include information that either:
- i. is in the public domain at the time of disclosure, as evidenced by a written document;
 - ii. becomes part of the public domain through no fault of the recipient, as evidenced by a written document;

- iii. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or
- iv. lawfully comes into the recipient's possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

3. Use of Classified Information

All Classified Information provided by any party or nonparty in the course of this litigation shall be used solely for the purpose of preparation, trial, and appeal of this litigation and for no other purpose and shall not be disclosed except in accordance with the terms of this Order.

4. Marking of Documents

Documents provided in this litigation may be designated by the producing person or by any party as Classified Information by marking each page of the documents so designated with a stamp indicating that the information is "Confidential," "Attorneys' Eyes Only," or "Confidential – Source Code." The designation should be made in a fashion or form that is conspicuous yet allows the Classified Information to remain legible. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. Originals shall be preserved for inspection. For a native file, the party shall include the designation in the file name. A party's inadvertent failure to mark shall not constitute a waiver of any rights.

5. Disclosure at Depositions

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty may be designated by any party as Classified Information by indicating on the record at the deposition that the testimony is "Confidential," "Attorneys' Eyes Only," or "Source Code" and is subject to the provisions of this Order.

Any party also may designate information disclosed at a deposition as Classified Information by notifying all parties in writing not later than 30 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Classified Information thereafter. Each party shall attach a copy of each such written notice to the face of the transcript and each copy of the transcript in that party's possession, custody, or control. All deposition transcripts shall be treated as "Attorneys' Eyes Only" for a period of 30 days after initial receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as Classified Information with blank, consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing Classified Information shall have page numbers that correspond to the blank pages in the main transcript.

Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Classified Information pursuant to this Protective Order, but such right of exclusion shall be exercised in good faith and shall be applicable only during periods of

examination or testimony during which Classified Information is being used or discussed. To that end, the Parties' counsel are required to confer in advance of any deposition to attempt to minimize the frequency and duration of any exclusion.

6. Disclosure to Qualified Persons

a. *To Whom.* Classified Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction. But if a disclosure is compelled by law or court order, the receiving party will notify the producing party as promptly as practicable (if at all possible, before making such disclosure). The receiving party shall seek a protective order or confidential treatment of such information or cooperate with the producing party to protect the information. Information designated as "Attorneys' Eyes Only" shall be restricted in circulation to Qualified Persons described in subsection 2(b).

b. *Retention of Copies During This Litigation.* Copies of Attorneys' Eyes Only information shall be maintained only in the offices of outside counsel for the receiving party and, to the extent supplied to experts described in subsection 2(b)(ii), in the offices of those experts. Any documents produced in this litigation, regardless of classification, that are provided to Qualified Persons shall be maintained only at the office of such Qualified Person and only necessary working copies of any such documents shall be made. Copies of documents and exhibits containing Classified Information may be prepared by independent copy services, printers, or illustrators for the purpose of this litigation.

c. Each party's outside counsel shall maintain a log of all copies of Attorneys' Eyes Only documents that are delivered to Qualified Persons.

7. Unintentional Disclosures

Documents unintentionally produced without designation as Classified Information later may be designated and shall be treated as Classified Information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential information, Attorneys' Eyes Only information, or Source Code, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

8. Documents Produced for Inspection Prior to Designation

In the event documents are produced for inspection prior to designation, the documents shall be treated as Attorneys' Eyes Only during inspection. At the time of copying for the receiving parties, Classified Information shall be marked prominently "Confidential," "Attorneys' Eyes Only," or "Source Code" by the producing party.

9. Consent to Disclosure and Use in Examination

Nothing in this order shall prevent disclosure beyond the terms of this order if each party

designating the information as Classified Information consents to such disclosure or if the Court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this order prevent any counsel of record from utilizing Classified Information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Classified Information, irrespective of which party produced such information.

10. Third Parties

a. *Generally.* To the extent that any discovery is taken of persons who are not Parties to this litigation (“Third Parties”) and in the event that such Third Parties contend the discovery sought involves trade secrets, confidential business information, or other proprietary information of the Third Party, or of any person or entity to whom the Third Party reasonably believes it owes an obligation of confidentiality with respect to such document, information, or material, such Third Parties may agree to be bound by this Order.

b. *Designation of Classified Information.* To the extent that Third Parties agree to be bound by this Order, such Third Parties may designate pursuant to one of the categories provided in Section 1 any documents, information, or other material, in whole or in part, produced or given by such Third Parties.

11. Challenging the Designation

A party shall not be obligated to challenge the propriety of a designation of Classified Information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Classified Information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who designated the document or information as Classified Information. The designating party shall then have 14 days to move the Court for an order preserving the designated status of the disputed information. Upon any such motion to the Court, the burden shall be on the designating party to show why its classification is proper. Pending a motion, the disputed information shall remain Classified Information unless the Court orders otherwise. If the designating party fails to bring a motion after 14 days have elapsed, the disputed information shall be de-classified without further order of the Court to the classification requested by the objecting party.

12. Manner of Use in Proceedings and Filing Under Seal

Any Classified Information that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

13. Violations

Any Party knowing or believing that any other Party (including, but not limited to, any Third Party) is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing Party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.

14. Return of Documents

Not later than 60 days after conclusion of this litigation and any appeal related to it, any Classified Information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any of the persons specified in Section 2 (except subsection 2(b)(iii)) shall be returned to the producing party or destroyed, except as this Court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including document indices, so long as that work product does not duplicate verbatim substantial portions of the text of any Classified Information.

15. Ongoing Obligations

Insofar as the provisions of this Protective Order, or any other protective orders entered in this litigation, restrict the communication and use of the information protected by it, such provisions shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used as exhibits in open court unless such exhibits were filed under seal, and (b) a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of this, or any other, protective order.

16. Advice to Clients

This order shall not bar any attorney in the course of rendering advice to such attorney's client with respect to this litigation from conveying to any party client the attorney's evaluation in a general way of Classified Information produced or exchanged under the terms of this order; provided, however, that in rendering such advice and otherwise communicating with the client, the attorney shall not disclose the specific contents of any Classified Information produced by another party if such disclosure would be contrary to the terms of this Protective Order.

17. Duty to Ensure Compliance

Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order.

18. Waiver


Pursuant to Federal Rule of Evidence 502, neither the attorney-client privilege nor work-product protection is waived by disclosure connected with this litigation. Nothing herein shall require

production of documents, information, or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other privilege, doctrine, or immunity. If documents, information, or other material subject to a claim of attorney-client privilege, work-product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information, or other material it reasonably believes is protected under the attorney-client privilege, work-product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information, or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information, or other material. The recipient(s) shall gather and return all copies of such documents, information, or other material to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party.

19. Modification and Exceptions

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

It is SO ORDERED this 14th day of February 2025.



ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LEO RIOT, as Trustee and Trust Administrator, §
on behalf of QUASAR SPENDTHRIFT TRUST, §

Plaintiff, Counterclaim Defendant §

v. §

APEX TRADER FUNDING INC., *et al.*, §

Defendants, Counterclaim Plaintiff §

v. §

MKNET, LLC and Daytraders.com §

Third Party Defendants. §

CIVIL CASE NO. 1:24-CV-01557-ADA

APPENDIX A

**UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING
PROTECTIVE ORDER**

I, _____, declare that:

1. My address is _____. My current employer is _____. My current occupation is _____.
2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” that is disclosed to me.
4. Promptly upon termination of these actions, I will return all documents and things designated

as “CONFIDENTIAL,” “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the Party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____